

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-586V

Filed: November 23, 2016

UNPUBLISHED

NANCY TYREE,

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Petitioner,

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v.

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SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Damages Decision Based on Proffer;  
Tetanus-Diphtheria-Acellular Pertussis  
("Tdap"); Shoulder Injury Related to  
Vaccine Administration ("SIRVA");  
Special Processing Unit ("SPU")

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Respondent.

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\*

*Paul Brazil, Muller Brazil, LLP, Dresher, PA, for petitioner.*

*Adriana Teitel, U.S. Department of Justice, Washington, DC, for respondent.*

## DECISION AWARDING DAMAGES<sup>1</sup>

**Dorsey**, Chief Special Master:

On May 17, 2016, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the "Vaccine Act"). Petitioner alleges that she suffered a shoulder injury related to vaccine administration ("SIRVA") following a July 3, 2015 tetanus-diphtheria-acellular pertussis ("Tdap") vaccine. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On October 17, 2016, a ruling on entitlement was issued, finding petitioner entitled to compensation for a SIRVA. On November 23, 2016, respondent filed a proffer on award of compensation ("Proffer") indicating petitioner should be awarded \$80,000.00. Proffer at 2. In the Proffer, respondent represented that petitioner agrees

<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

with the proffered award. Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$80,000.00 in the form of a check payable to petitioner, Nancy Tyree.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**

Nora Beth Dorsey  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

NANCY TYREE,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

No. 16-586  
Chief Special Master Dorsey  
ECF

**PROFFER ON AWARD OF COMPENSATION<sup>1</sup>**

On May 17, 2016, Nancy Tyree (“petitioner”) filed a petition for compensation (“Petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), as amended. The Petition alleges that petitioner received a tetanus-diphtheria-acellular pertussis (“Tdap”) vaccination on July 3, 2015, and subsequently suffered “left shoulder injuries.” Petition at 1 (Preamble).

On October 17, 2016, the Secretary of Health and Human Services (“respondent”) filed a Vaccine Rule 4(c) Report, conceding that petitioner suffered from a shoulder injury related to vaccine administration (“SIRVA”), and recommending that the Court award petitioner compensation. Respondent hereby submits the following proffer regarding the award of compensation.

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<sup>1</sup> This proffer does not include attorneys’ fees and costs, which the parties intend to discuss after the Damages Decision is issued.

**I. Items of Compensation**

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$80,000.00, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

**II. Form of the Award**

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of \$80,000.00, in the form of a check payable to petitioner.<sup>2</sup> Petitioner agrees.

Respectfully submitted,

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*/s/ Adriana Teitel*  
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Dated: November 23, 2016

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<sup>2</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.